

# Journal of Civil Rights and Economic Development

---

Volume 21  
Issue 3 *Volume 21, Spring/Summer 2007, Issue*  
3

Article 10

---

March 2007

## What Do Marriage and Welfare Reform Really Have in Common? A Look Into TANF Marriage Promotion Programs

Teresa Kominos

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcred>

---

### Recommended Citation

Kominos, Teresa (2007) "What Do Marriage and Welfare Reform Really Have in Common? A Look Into TANF Marriage Promotion Programs," *Journal of Civil Rights and Economic Development*. Vol. 21 : Iss. 3 , Article 10.

Available at: <https://scholarship.law.stjohns.edu/jcred/vol21/iss3/10>

This Note is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

# WHAT DO MARRIAGE AND WELFARE REFORM REALLY HAVE IN COMMON? A LOOK INTO TANF MARRIAGE PROMOTION PROGRAMS

TERESA KOMINOS\*

## INTRODUCTION

In 1996, Congress passed a welfare reform bill that aimed to “end welfare as we know it.”<sup>1</sup> This bill replaced Aid to Families with Dependant Children, a decades-old welfare bill.<sup>2</sup> Congress passed the Personal Responsibility and Work Reconciliation Act of 1996, which created the block grant system of Temporary Aid to Needy Families (TANF).<sup>3</sup> TANF attempted to overhaul an outdated and inefficient public assistance program by creating new goals and setting higher standards.<sup>4</sup> TANF imposes new rigorous work requirements<sup>5</sup>, statewide goals of employment<sup>6</sup>, marriage and independence from welfare<sup>7</sup>, and sanctions on states who are not meeting

\* J.D. Candidate, June 2007, St. John's University.

<sup>1</sup> See Bill Clinton, *Transcript of Speech by Clinton Accepting Democratic Nomination*, N.Y. TIMES, July 17, 1992, at A14 (citing to portion of Presidential nomination speech by then Gov. Bill Clinton to Democratic National Convention discussing New Covenant's approach to welfare); see also A. Mechele Dickerson, *Bankruptcy Reform: Does the End Justify the Means?*, 75 AM. BANKR. L.J. 243, 252-54 (2001) (noting new PRWRA welfare legislation and TANF block-grant system have ended welfare “as we know it”).

<sup>2</sup> See generally 42 U.S.C. §§ 601-15 (2006). AFDC was revived in 1960's as part of system of social reform. See, e.g., 45 C.F.R. § 233.20 (2006).

<sup>3</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 104 P.L. 193 (1996). TANF was passed on August 21, 1996 as part of the PRWRA.

<sup>4</sup> See generally 42 U.S.C. § 601 (setting forth several goals of new legislation); see also Dickerson, *supra* note 1, at 253-54 (noting TANF to have ended welfare “as we know it”).

<sup>5</sup> 42 U.S.C. § 607(c)(1) (imposing minimum average number of work hours per week in certain qualified activities).

<sup>6</sup> 42 U.S.C. § 607(a)(1) (stating that to receive grant state has to achieve minimum participation rate with respect to all families receiving assistance under State program funded under this section).

<sup>7</sup> 42 U.S.C. § 601 (highlighting one of purposes of Act is ending dependence of needy

requirements.<sup>8</sup> This paper will discuss the legitimacy of the TANF goals, specifically marriage promotion initiatives. In addition, this note will raise constitutional challenges to TANF's marriage goals and methods, and make policy recommendations that are aimed at helping families rise above the poverty line, and not simply off the welfare rolls.

TANF was an attempt to overhaul welfare and effectively change the state of welfare in this country.<sup>9</sup> Unfortunately, this bill ignores the truths of poverty that are the real reasons people enroll in public assistance.<sup>10</sup> Marriage promotion programs are just one example of the disconnect this legislation illustrates.<sup>11</sup> TANF does not properly reflect the reality faced everyday by the poor, but instead introduced a goals-based system of incentives and penalties that assume a welfare mother has control over her lifestyle, or, more frankly, that she chooses to be poor.<sup>12</sup> It presumes, therefore, that if given the proper incentive, she can also choose not to be poor.<sup>13</sup> This is simply not the case. Marriage promotion

parents on government benefits by promoting job preparation, work and marriage).

<sup>8</sup> 42 U.S.C. § 609 (2006) (specifying the general penalties of reduction in grant money for regular violations as well as enhanced penalties for intentional violations and misuse of competitive welfare-to-work funds).

<sup>9</sup> See Dickerson, *supra* note 1, at 252-54 (noting TANF to have ended welfare "as we know it"); see also Jennifer E. Spreng, *When "Welfare" Becomes "Work Support": Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy*, 78 AM. BANKR. L.J. 279, 281 (2004) (finding 1996 to be end of "old welfare system with its focus on case payments to poor women with children only if they did not work.").

<sup>10</sup> See Dickerson, *supra* note 1, at 254-56 (discussing "mandatory work requirements" of TANF); see also Herman Schwartz, *Why Losing Food Stamps is Now Part of the War on Drugs*, L.A. TIMES, June 6, 1999, at M2 (noting that people convicted of drug-related felonies can no longer receive food stamps).

<sup>11</sup> See Brenda Cossman, *Contesting Conservatism, Family Feuds and Privatization of Dependency*, 13 AM. U.J. GENDER SOC. POL'Y & L. 415, 458 (2005) (suggesting that disconnect exists between fiscal situation of poor people, and social conservatives' view of traditional family); see also Linda Gordon, *Who Deserves Help? Who Must Provide?*, 577 ANNALS 12, 13 (2001) (finding it "problematic" that society finds women's dependence on male earnings to be "desirable social goal.").

<sup>12</sup> See Cossman, *supra* note 11, at 458-59 (stating that "the efforts to reform welfare eligibility and entitlements have focused on the other irresponsible citizen in fiscal, libertarian and social conservative stories of welfare: the single mother"); see also Karen Syma Czapanskiy, Symposium: *Domestic Violence and the Maryland Family Violence Option*, 11 AM. U.J. GENDER SOC. POL'Y & L. 447, 450 (2003) (noting that "structural obstacles do not count as reasons for a woman's inability to become self-sufficient.").

<sup>13</sup> See Linda Burnham, *Welfare Reform, Family Hardship, and Women of Color*, 577 ANNALS 38, 40 (2001) (highlighting "absurd and agonizing" decision women must face concerning "whether to feed their children or house them"); see also Cossman, *supra* note 11, at 459 (suggesting that "welfare mother's reliance on the state" would end if all "welfare mothers" either married or began working).

programs exemplify the false assumptions made about the situation a poor mother finds herself in.<sup>14</sup> Effectively TANF says that a poor mother is simply making the wrong choice, and that we, as a nation, know that marriage is the proper solution.

### I. TEMPORARY AID TO NEEDY FAMILIES

Temporary Aid to Needy Families was passed as part of the larger Personal Responsibility and Work Opportunity Reconciliation Act of 1996.<sup>15</sup> This Act abolished the former Aid to Families with Dependant Children and replaced it with the block grant system of TANF.<sup>16</sup> TANF allows states to construct their own welfare systems within certain guidelines and performance percentages.<sup>17</sup> TANF also restricts the time recipients may receive assistance to five years.<sup>18</sup> TANF has four specific goals that the Act seeks to pursue: (1) “[P]rovide assistance to needy families so that children may be cared for in their homes or in the homes of relatives,”<sup>19</sup> (2) “end the dependence of needy parents on government benefits by promoting job preparation, work and marriage,”<sup>20</sup> (3) “prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies”<sup>21</sup>

<sup>14</sup> See Gordon, *supra* note 11, at 13 (discussing “how women’s and children’s disproportionate poverty derives from the gender structures of society”); see also Czapanskiy, *supra* note 12, at 450 (noting welfare reform to insist on “personal responsibility”).

<sup>15</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 104 P.L. 193 (1996); see Dickerson, *supra* note 1, at 252-53 (explaining intentions of giving “states authority to exercise maximum flexibility to design their own welfare programs” through the Act).

<sup>16</sup> See generally 104 P.L. 193 (1996). See 45 C.F.R. § 233.20 (2006) for an example of the AFCD legislation.

<sup>17</sup> 42 U.S.C. § 607 (2006). This section lays out mandatory work requirements of the Act. The Act defines work participation percentages for each year following enactment in 1996. For example, in 1998, at least thirty percent of the state’s TANF recipients must be participating in work programs. *Id.*

<sup>18</sup> 42 U.S.C. § 608(a)(7).

<sup>19</sup> 42 U.S.C. § 601(a)(1).

<sup>20</sup> 42 U.S.C. § 601(a)(2).

<sup>21</sup> 42 U.S.C. § 601(a)(3).

and, (4) encourage the formation and maintenance of two parent families.”<sup>22</sup>

Congressional findings stated in TANF help to illustrate the purpose and commitment to these goals. The first stated congressional finding is that “marriage is the foundation of a successful society.”<sup>23</sup> Followed by, “marriage is an essential institution of a successful society which promotes the interests of children.”<sup>24</sup> Congress continues with a list of findings related to pre-marital childbirths and teen pregnancy, as related to the incidences of children receiving public assistance.<sup>25</sup> The importance that Congress places on each of these issues, marriage in particular, is evidenced by the significance stressed in the findings. Marriage is the first issue addressed, which suggests that it was foremost in the minds of the policy makers.<sup>26</sup> While it is recognized that marriage is a very significant and celebrated event in an individual’s life, many question the legitimacy of using TANF funds to promote this type of social contract between two people.<sup>27</sup>

<sup>22</sup> 42 U.S.C. § 601(a)(4).

<sup>23</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Title I, § 101(1).

<sup>24</sup> P.L. 104-193, Title I, § 101(2).

<sup>25</sup> P.L. 104-193, Title I, § 101(2-10) (stating such findings as the number of individuals receiving aid to families with dependent children has more than tripled since 1965 with more than two-thirds of recipients being children, and that increase in number of children receiving public assistance is closely related to increase in births to unmarried women).

<sup>26</sup> P.L. 104-193, Title I, § 101(1); see Cossman, *supra* note 11, at 471 (discussing how Congressional findings emphasize importance of traditional family).

<sup>27</sup> See generally FAMILY VIOLENCE PREVENTION FUND, TESTIMONY OF THE FAMILY VIOLENCE PREVENTION FUND ON WELFARE REFORM AND MARRIAGE PROMOTION INITIATIVES, SUBMITTED TO THE HOUSE WAYS AND MEANS COMMITTEE (2005), <http://Endabuse.org/programs/publicpolicy/files/MarriageTestimony.pdf> [hereinafter ENDABUSE] (discussing various reasons why using TANF funds to promote marriage might not be legitimate including high rates of domestic violence among TANF recipients); NOW LEGAL DEFENSE AND EDUCATION FUND, TANF REAUTHORIZATION: SUMMARY OF MARRIAGE PROMOTION PROVISIONS IN HOUSE AND SENATE FINANCE VERSIONS OF H.R. 4 (2003), <http://www.legalmomentum.org/issues/wel/HR4MarriageSummary.pdf> [hereinafter NOW]

(stating some reasons as to why government-funded marriage programs are controversial, such as they place domestic violence victims at greater risk of harm).

## II. INITIAL REACTIONS TO MARRIAGE PROMOTION

Marriage has traditionally been a social institution regulated by the states, but not without federal intrusion.<sup>28</sup> Over time however, marriage has become one of numerous choices two people can choose to pursue, rather than the ultimate affirmation of one's role in society.<sup>29</sup> Women have many more options than they were once afforded. Notably, one such option is the decision *not* to marry. With the introduction of TANF, Congress waged a political attack against this choice, particularly with marriage promotion initiatives. These programs attempt to encourage marriage by highlighting only the positives of matrimony and ignoring the realities of married life for a low-income family.<sup>30</sup>

TANF raises many questions about the proper role the government should play in marriage decisions. Specifically, many family law scholars question the role marriage continues to play in our society.<sup>31</sup> For example, distinguished family law scholar Harry Krause argues that:

<sup>28</sup> See W. Todd Akin, Symposium on Marriage and the Law Essays, *Debunking "Conservative" Arguments Against the Federal Marriage Amendment*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 219, 220 (2004) (stating that many conservatives maintain that "marriage has been and should remain under the rightful jurisdiction of the states."); see also Theodora Ooms, *The Role of the Federal Government in Strengthening Marriage*, 9 VA. J. SOC. POL'Y & L. 163, 176 (2001) ("[T]hese . . . legislative developments have reopened the question about whether there is indeed a public interest in marriage, and if there is, what role the federal (and state) government should play to strengthen and possibly shape the institution.").

<sup>29</sup> See Harry D. Krause, *Marriage for the New Millennium: Heterosexual, Same-Sex—Or Not At All?*, 34 FAM. L. Q. 271, 275-76 (2000) (listing numerous choices couples have besides institution of marriage and how today's society offers broad variety of lifestyles for sexual partners including more unmarried relationships with or without children); see also Ooms, *supra* note 28, at 164-165 (discussing historian Nancy Cott's analysis of the evolution of marriage roles).

<sup>30</sup> See Patrick F. Fagan et al., *Marriage: Still the Safest Place For Women and Children*, (March 9, 2004), <http://www.heritage.org/Research/Family/bg1732.cfm> (listing many positives about the institution of marriage, such as married women with children suffer less abuse than single mothers with children); see also Robert E. Rector, *Marriage Promotion, Marriage Promotion*, ISSUES 2006: THE CANDIDATE'S BRIEFING BOOK 105, 105 (The Heritage Foundation 2006), <http://www.heritage.org/research/features/issues/issuearea/MarriagePromotion.cfm> ("The beneficial effects of marriage, both for individuals and for society, are beyond reasonable dispute. There is a broad and growing consensus that government policy should promote rather than discourage healthy marriage.").

<sup>31</sup> See Maggie Gallagher, *Rites, Rights, and Social Institutions: Why and How Should the Law Support Marriage?*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 225, 228-29 (2004) ("Among family law scholars, this view of marriage as primarily an emotional good created by the private couple leads to calls . . . to abolish any distinction between cohabitation and marriage, between what some call formal and informal unions."); see

“[t]oday’s sexual and associational lifestyles differ so much that the state should not continue to deal with them as though they were one: the old role-divided, procreative marriage of history. That marriage may not be history, but it should be seen for what it has become: one lifestyle choice among many.”<sup>32</sup>

Krause’s argument continues by evaluating current tax laws. Krause argues that the informal distinctions between married couples and couples who cohabit have blurred considerably, to the point where the tax law treats married and unmarried couples in similar factual situations, differently.<sup>33</sup> Krause argues that this distinction, which treats marriage as a tax event that triggers added legal benefits and obligations, should be extended to couples who engage in formal cohabitation as well.<sup>34</sup> This is an interesting argument when placed in the context of TANF marriage promotion programs. The congressional findings for TANF suggest that marriage is the ultimate structure for the well being of a child.<sup>35</sup> However, if the current trend in socialization is away from marriage and toward more informal cohabitation arrangements, should policy makers consider this? Moreover, studies suggest that child development is most affected by economic stability, not necessarily marriage.<sup>36</sup> It is asserted that the legitimate goals of TANF should be to establish situations where the family is economically independent, so parents can offer their children a more stable living environment.<sup>37</sup> While marriage

also Krause, *supra* note 29, at 276 (arguing blurred lines between formal cohabitation and marriage).

<sup>32</sup> Krause, *supra* note 29, at 276.

<sup>33</sup> *Id.* at 278 (arguing that married or unmarried couples who are in the same factual positions should be treated equally).

<sup>34</sup> *Id.* (arguing that modern relationships are no longer defined by marriage, and that law should reflect this collective shift).

<sup>35</sup> P.L. 104-193, Title I, § 101(2) (“Marriage is an essential institution of a successful society which promotes the interests of children.”).

<sup>36</sup> See Henry Ricciuti, *Single Parenthood, Achievement, and Problem Behavior in White, Black and Hispanic Children*, 97 J. EDUC. RES. 196-206 (2004) (suggesting that children whose parent or parents are not economically stable suffer due to a lack of resources that enhance the children’s care, socialization, and educational development); see also ENDABUSE, *supra* note 27, at 7 (arguing that parents who have educational opportunities that extend beyond high school have drastically increased earning ability, and are better able to provide for their children which in turn leads to better upbringing for their child).

<sup>37</sup> See Angela Hooton, Note, *From Welfare Recipient To Childcare Worker: Balancing*

increases the possibility of economic stability, it is not the ultimate answer. Legislation should reflect social realities, and the reality for most poor women is that marriage is one choice, among many others, but it is not necessarily the best, or only option for their families.

*American Prospect* writer Kathryn Edin suggests more and more poor couples choose cohabitation over marriage to ensure some sort of financial security for their children.<sup>38</sup> The four most prominent reasons she cites for non-marriage are affordability, respectability, trust, and control.<sup>39</sup> Edin argues that mothers seek stability for their children, and for most mothers who receive public assistance, marriage is simply not a viable option.<sup>40</sup> These women seek independence first. Edin suggests that a woman who is financially stable is more willing to marry because it enhances her bargaining power in a relationship.<sup>41</sup> Additionally, these women cite the lack of marriageable men in the neighborhood in which they live.<sup>42</sup> Men who are unemployed or involved in illegal activities are not suitable candidates because of the instability they could bring into the home.<sup>43</sup> Poor mothers, just like any other

*Work And Family Under TANF*, 12 TEX. J. WOMEN & L. 121, 125-26 (2002) (stating that one goal of TANF is to reduce parental dependence on government benefits); see also Christie N. Love, *Not in Our Country? A Critique of the United States Welfare System Through the Lens of China's One-Child Law*, 14 COLUM. J. GENDER & L. 142, 164 n.112 (2005) (finding that studies have shown that TANF can have positive effect on low-income couples' stability).

<sup>38</sup> See Kathryn Edin, *Why Poor Women Don't Remarry*, AM. PROSPECT (Jan. 3, 2000), <http://www.prospect.org/print/V11/4/edin-k.html> (discussing survey of nearly 400 low-income single mothers in four different U.S. cities).

<sup>39</sup> *Id.* (finding common trend among poor single mothers weighing their financial and emotional risks against benefits of marriage).

<sup>40</sup> *Id.* ("[L]ow-income single mothers believe that marriage will probably make their lives more difficult.").

<sup>41</sup> *Id.* ("A good marriage from the woman's point of view is one where she contributes financially so that she has a say in the decision making.").

<sup>42</sup> See Edin, *supra* note 38 (stating that women feel marriage comes with more risk than reward when talking about the men who live in the same neighborhood as them); see also KRISTIN S. SEEFELDT & PAMELA J. SMOCK, NATIONAL POVERTY CTR., MARRIAGE ON THE PUBLIC POLICY AGENDA: WHAT DO POLICY MAKERS NEED TO KNOW FROM RESEARCH? 6 (2004), <http://www.npc.umich.edu/publications/workingpaper04/paper2/04-02.pdf> [hereinafter NPC] (arguing that erosion of earnings coupled with disproportionately high incarceration rates have led to reduction of marriageable men in low income communities).

<sup>43</sup> See Bruce Chapman, Editorial, *Adoption is an Orphan*, WASH. POST, Apr. 21, 1989, at A27 (stating children raised around drugs, crime and poverty are likely to experience family instability); see also Edin, *supra* note 38 ("Drug money cannot buy marriage or even long-term co-residence.").



mother, recognize this danger and refuse to settle for a situation that could be potentially harmful to their children. By choosing to ignore this reality, marriage promotion programs choose to ignore the realities of TANF families.<sup>44</sup> Cohabitation is a more attractive option for women living in low-income communities because there are no legal consequences, which in turn often means less financial consequence.<sup>45</sup> TANF mothers cannot afford extra-familial expenses, because this choice would take money away from their children.<sup>46</sup> For many welfare mothers, marriage is simply not always the responsible choice.

### III. THE FAILURE OF BEHAVIOR MODIFICATION PROGRAMS

Behavior-modification programs attempt to offer incentives or impose penalties to encourage certain types of desired behaviors.<sup>47</sup> These policies were introduced into the welfare discourse as an attempt to integrate the welfare population into mainstream.<sup>48</sup> Older models of behavior modification

<sup>44</sup> See P.L. 104-193, Title I, § 101(2) ("Marriage is an essential institution of a successful society which promotes the interests of children."). *But see* Edin, *supra* note 38 (describing stories told by mothers about both their children's fathers and other boyfriends who leave children home alone, drink heavily, do drugs, and neglect or even abuse the children); *see also* Betty Holcomb, *Conservatives Push for Marriage Promotion Programs*, Women's e-News (Oct. 15, 2002), <http://www.womensenews.org/article.cfm/dyn/aid/1073> (suggesting some impoverished women are forced to choose between government funds and an unsafe marriage).

<sup>45</sup> See Edin, *supra* note 38 ("Deferring or avoiding marriage allows mothers to substitute an economically productive male for an unproductive one, should the need arise. Divorce takes both time and money, both of which these mothers find in short supply."); *see also* ENDABUSE, *supra* note 27, at 2 (discussing the high divorce rate and uncertainty that marriage will end women's economic problems).

<sup>46</sup> See Robert B. Reich, *Marriage Aid that Misses the Point*, WASH. POST, Jan. 22, 2004, at A25 (positing that when an impoverished woman marries an equally impoverished male she may end up having to support him as well at the expense of her children); *see also* Editorial, *Heartless Marriage Plans*, N.Y. TIMES, Jan. 17, 2004, at A14 (concluding poor woman desire marriage but they lack access to mature, responsible mates).

<sup>47</sup> See Brad D. De Noble, *Reduction of Welfare Dependency Via Incentives to Recipients—Commendable Goal, But at What Cost?*, 32 U. OF LOUISVILLE J. OF FAM. L. 885, 887-88 (1994) (discussing Learnfare's attendance policy in order to receive AFDC money); *see also* Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L. J. 719, 727, 736 (1992) (listing financial sanctions mandated by Learnfare for students who miss certain amount of classes as well as reductions in benefits under the Family Cap program for additional children conceived after mother begins receiving AFDC).

<sup>48</sup> See De Noble, *supra* note 47, at 886 (stating Learnfare promotes education of children with the goal of creating a self-sufficient adult); *see also* Williams, *supra* note 47,

programs such as Learnfare,<sup>49</sup> or Family Cap<sup>50</sup> have proven unsuccessful for a multitude of reasons.<sup>51</sup> Lucy Williams<sup>52</sup> argues that one reason for the failure of these programs is the use of policies based on misguided assumptions of a causal connection between poverty and conscious decisions.<sup>53</sup> Williams argues that lawmakers wrongly rely upon a series of false assumptions about the moral character and psyche of the poor.<sup>54</sup> The catalyst for this type of thinking is that welfare is a social contract, made with the government by the recipient that she or he will act in a certain morally acceptable way (as determined by the government).<sup>55</sup>

Learnfare was first introduced in Wisconsin in 1987,<sup>56</sup> and was expanded at the beginning of the 1988 school year to include all teen dependants living with a parent.<sup>57</sup> The goal of the program was to reduce teen truancy by ensuring that

at 720 (discussing how proponents of welfare reform argued that the requirements for AFDC benefits would result in AFDC recipients becoming more productive members of society).

<sup>49</sup> See WIS. STAT. § 49.26 (2006); *see also* Williams, *supra* note 47. Learnfare was introduced by former Wisconsin Governor Tommy G. Thompson as a method to curb high school truancy of welfare children. *Id.* at 736.

<sup>50</sup> See N.J. STAT. § 44: 10-61 (2006); *see also* Williams, *supra* note 47. Family Cap was an attempt to force poor women to abstain from having additional children once they were receiving public assistance. *Id.* at 736.

<sup>51</sup> See Williams, *supra* note 47, at 746 ("This attempt to use economic motivation to create changed behavior in AFDC mothers and children leads to 'solutions' that are contrary to empirical evidence and thus cannot solve the problems for which they are ostensibly designed. 'Welfare reform' programs such as Learnfare or Family Cap do not solve burgeoning social problems; they reflect only political expedience and culturally biased mythology."). *But see* De Noble, *supra* note 47, at 888 (highlighting arguments for seeing Learnfare as both a success and failure depending on personal opinion).

<sup>52</sup> Associate Professor, Northeastern University Law School; A.B. 1969, Baylor University; J.D. 1974, University of Chicago.

<sup>53</sup> See Williams, *supra* note 47, at 734 (discussing how Learnfare assumes the mother is at fault for her child's behavior and ignores the fact that some teens will not respond to any incentive program and thus will not attend school even if it means less money for the family).

<sup>54</sup> *Id.* at 736 (stating the program was premised on superficial notions about the psychology of poor families).

<sup>55</sup> See *id.* at 732 (discussing the second articulated goal of Learnfare). *But see* Thomas Corbett et al., *Learnfare: The Wisconsin Experience*, 12 FOCUS 1, Fall & Winter 1989, at 7 ("[T]he lack of services is evidence that government is not living up to its part of the 'social contract.'").

<sup>56</sup> 1987 WIS. LAWS 27 (1987); *see* Williams, *supra* note 47, at 726 (stating that originally the statute only targeted teens who themselves were parents).

<sup>57</sup> Williams, *supra* note 47, at 726. The Wisconsin Department of Health and Social Services limited the nonparent teen population to those living with a natural or adoptive parent. WIS. ADMIN. CODE § 201.195(3)(k) (1990). Subsequent legislation codified this limitation. 1987 WIS. LAWS 1664.

children of welfare recipients complete high school and receive a minimum level of education.<sup>58</sup> Under this program, a teenager who missed ten unexcused days of school in one semester was monitored, and thereafter sanctioned if he or she missed two unexcused days of school in any month.<sup>59</sup> When a student was sanctioned, his or her parent's aid was reduced by the full amount designated for this child.<sup>60</sup> On the surface, such a program may seem harmless or even innovative, but in reality this program did nothing more than penalize already suffering families. As stated by Williams, for Learnfare to be effective, several assumptions were made: (1) a mother can control her teenager and force him or her to attend school; (2) the reasons for truancy originate in the family setting and are not caused by external forces; and (3) a teen will be motivated to attend school to prevent their family from being punished.<sup>61</sup> The execution of the program proved that these assumptions were in fact false. During the 1989 school year, over 2000 students were sanctioned each month, costing families \$3,080,000 in assistance.<sup>62</sup> Williams cites data that suggests children of AFDC families missed only three more days per school year than children of non-AFDC parents,<sup>63</sup> and studies of the effectiveness of Learnfare

<sup>58</sup> See De Noble, *supra* note 47, at 886-87 (arguing Learnfare's manipulation of welfare as a way to aid the state's in education and ultimately decrease dependence on public assistance); see also Williams, *supra* note 47, at 727 (discussing how acquiring a minimum level of education was intended to create more productive citizens).

<sup>59</sup> See De Noble, *supra* note 47, at 887-88 (explaining that failure to meet semester attendance requirements subjects recipient to a monthly attendance requirement of no more than two absent days); Williams, *supra* note 47, at 727 (discussing the attendance requirements of Learnfare).

<sup>60</sup> See De Noble, *supra* note 47, at 888 (discussing the steps involved in the eventual reduction of benefits including a written notice of the effective date of the sanction, the reduced or discontinued amount, and the right to a fair hearing); see also Williams, *supra* note 47, at 727 (describing how in Wisconsin at the time, for a single mother with two children, such a sanction would result in a monthly reduction of \$77.60).

<sup>61</sup> Williams, *supra* note 47, at 728. A Milwaukee assistant principal was quoted as saying that sanctioned students "are not going to realize the value of an education by docking their parents. We've had youngsters brought in here by their Learnfare parents at 8 o'clock, and at 9 o'clock they're gone. It's in one door and out the other." Kenneth J. Cooper, *Financial Penalties Prove No Easy Solution To Dropout Problem*, WASH. POST, Feb. 16, 1990, at A3 (quoting Robert Griffin, Assistant Principal, North Division High School).

<sup>62</sup> Williams, *supra* note 47, at 727 (citing State of Wisconsin Legislative Audit Bureau 90-23, *An Evaluation of Learnfare Program Administration*, Department of Health and Social Services 5 (Jul. 1990)).

<sup>63</sup> Williams, *supra* note 47, at 733 (citing *Wisconsin Learnfare Program: Hearing*

showed no positive results.<sup>64</sup> In fact, one Milwaukee study even suggested that Learnfare increased, rather than decreased, school absences.<sup>65</sup>

Williams discusses similar reactions and results with the Family Cap program.<sup>66</sup> Family Cap is a somewhat similar program to Learnfare that varies from state to state, but essentially denies benefits for additional children of a mother who is already receiving assistance.<sup>67</sup> Family Cap relies on the assumption that welfare mothers purposely have additional children to receive more assistance.<sup>68</sup> Although the numbers vary by state, in Illinois the difference in aid for a two-child family as opposed to a three-child family is a little more than \$100 per month<sup>69</sup>, an amount that can hardly be argued as an incentive to have another child. This small increase in benefits does not reward families, but enables them to live arguably, at the basic subsistence levels necessary for survival.<sup>70</sup> In May 2002, there were over 12,000

*Before the Subcomm. on Social Security and Family Policy of the Senate Comm. on Finance*, 101st Cong., 2d Sess. 50 (1990) (testimony of Jo Anne B. Barnhart, Assistant Secretary for Family Support, U.S. Department of Health and Human Services)).

<sup>64</sup> See Williams, *supra* note 47, at 735 (citing a study conducted by ETI, stating that Learnfare did not show improvement in student attendance); see also John Pawasarat et al., *Evaluation of the Impact of Wisconsin's Learnfare Experiment on the School Attendance of Teenagers Receiving Aid to Families with Dependent Children* (Feb. 1992), <http://www.uwm.edu/Dept/ETI/pages/surveys/each/learn292.htm> (finding that Learnfare program did not improve school attendance, reduce semester absences, or improve graduation rates, and number of students missing at least one day of school per week increased during Learnfare program).

<sup>65</sup> See Williams, *supra* note 47, at 735 (citing such findings to Milwaukee study); see also De Noble, *supra* note 47, at 899 (discussing the lack of proof that the sanctions of Learnfare actually improve school attendance).

<sup>66</sup> See Williams, *supra* note 47, at 736 (stating Family Cap, like Learnfare was based on faulty assumptions about the choices made by the poor).

<sup>67</sup> See Williams, *supra* note 47, at 736 (describing Family Cap as program intended to influence poor women's decisions on procreation); see also Sargent Shriver National Center on Poverty Law, *End the Family Cap* (Nov. 21, 2002), [http://www.povertylaw.org/news-and-events/woman-view/2002\\_11\\_21](http://www.povertylaw.org/news-and-events/woman-view/2002_11_21) [hereinafter *End the Family Cap*] (discussing Family Cap program, also called the child exclusion law).

<sup>68</sup> See *End the Family Cap*, *supra* note 67 (discussing the "myth" that welfare mothers have more children to receive additional benefits); see also Williams, *supra* note 47, at 720-21 (explaining how welfare programs were designed with intention of influencing poor families to adapt to middle-class values).

<sup>69</sup> *End the Family Cap*, *supra* note 67. A family with two children receives a monthly benefit of \$292 per month. A family with three children receives a monthly benefit of \$396 per month. An increase of \$104 for having an additional child. *Id.*

<sup>70</sup> See Williams, *supra* note 47, at 740 (discussing how incremental increase receives barely covers such basic essentials as diapers, clothing, bottles and formula); *End the*

children who were denied assistance in Illinois because of Family Cap.<sup>71</sup> These children were being punished based solely on the fact that they were conceived, and these families fell deeper into poverty because of this additional child.<sup>72</sup>

Behavior modification programs eventually lost their luster and fell into the backdrop of political discourse. However, marriage initiative programs seem to be the new generation of behavior modification programs that promote moral stigmatization and false assumptions about the poor. Through TANF marriage promotion programs we see a rebirth of policy makers relying on faulty assumptions about the reality of living poor and the ways to correct this "deviant propensity."<sup>73</sup> TANF assumes that a mother can or should marry the father of her children.<sup>74</sup> TANF also assumes that if this mother marries her child's father then she will no longer rely on public assistance.<sup>75</sup> These assumptions ignore the reality that a poor mother faces. First, she may not be able to marry her child's father, for any number of reasons.<sup>76</sup> Second,

Family Cap, *supra* note 67 (arguing small increase of benefits from having three instead of two children is not a "reward," but sufficient to maintain only basic levels of living).

<sup>71</sup> End the Family Cap, *supra* note 67. 12,435 children were denied assistance because of the Family Cap program. *Id.*

<sup>72</sup> A family with a newborn that is denied assistance falls deeper into poverty. According to the Family Cap program, if a child is born outside of the ten month period after the initial application for assistance, the family is not eligible for additional assistance. End the Family Cap, *supra* note 67.

<sup>73</sup> See Morgan B. Ward Doran & Dorothy E. Roberts, Symposium, *Welfare Reform Ends in 2002: What's Ahead for Low-Income and No-Income Families? Welfare Reform and Families in the Child Welfare System*, 61 MD. L. REV. 386, 399-400 (2002) (writing that welfare programs "carry clear assumptions about the morality and motivations of welfare recipients" which reinforce the notion that welfare recipients are the cause of social problems); Williams, *supra* note 47, at 727 (discussing how behavior modification programs emanate from the myth that social problems are caused by the deviant behavior of welfare recipients).

<sup>74</sup> See *Pro-marriage Initiative Holds Promise for Poor*, USA TODAY, Feb. 27, 2002, at 12A (writing that new welfare proposals are aimed at promoting marriage among low-income individuals). But see Reich, *supra* note 46 (reasoning that lack of education is the main reason for poverty and marriage is not the solution as the poverty problem would perpetuate if a mother were to marry a man with a low-income job).

<sup>75</sup> See Reich, *supra* note 46 (arguing that low-income mothers who marry, often marry low-income men, making it less likely that they will stop relying on public assistance). But see Ronald K. Fitten, *Surprises in Welfare Study - Many Women Get Off Aid Within Two Years - And Stay Off*, SEATTLE TIMES, July 9, 1991, at E1 (proposing that education and better job opportunities are more effective solutions than marriage in helping low-income families get off public assistance).

<sup>76</sup> See Edin, *supra* note 38 (listing many reasons why low-income mothers do not remarry such as the desire for economic stability, the wish for respectability (and how marriage to low-income men will not achieve that), the distrust of low-income men in

even if marriage is an option, this does not guarantee that this man will be able to support her or her family.<sup>77</sup> Third, and perhaps most importantly, marriage is a choice, and the choice not to marry is her prerogative, whatever the reason may be.<sup>78</sup> State sanctioned marriage promotion overlooks the social truths that a poverty stricken mother faces on a day to day basis.<sup>79</sup>

#### IV. THE HEALTHY MARRIAGES INITIATIVE

Although TANF was passed in 1996, many states did not implement marriage promotion programs until the Bush Administration introduced the "Healthy Marriages Initiative" in 2002.<sup>80</sup> The stated goal of the "Healthy Marriages Initiative" is to "help couples who choose marriage for themselves develop the skills and knowledge necessary to form and sustain healthy marriages."<sup>81</sup> The Administration is using TANF as a vehicle for their plan of promoting marriage and therefore stability and independence in low income

their ability to handle money, raise children, and remain faithful, and the enjoyment of economic independence); *see also* Roger Worthington, *Governor Proposes to Reward Marriage*, CHI. TRIBUNE, Feb. 14, 1991, at 25 (arguing that welfare programs can push young, low-income mothers into marriages they do not want because of abusive or irresponsible husbands).

<sup>77</sup> *See* Edin, *supra* note 38 (writing that the men in the lives of low-income mothers often hold unstable employment and offer varying financial contributions to the family); *see also* Reich, *supra* note 46 (stating that because a less stable job market has made it difficult for low-income men, "if the mother is living and sharing expenses with a working man who's also at the bottom of the income ladder, they're still likely to be poor.").

<sup>78</sup> *See* *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (finding that the Fourteenth Amendment provides the right "to marry, or not marry"); *see also* Cara C. Orr, Comment, *Married to a Myth: How Welfare Reform Violates the Constitutional Rights of Poor Single Mothers*, 34 Cap. U.L. REV. 211, 214 (2005) (stating that the right to not marry has been recognized by the Supreme Court as being protected under the Equal Protection Clause of the Fourteenth Amendment).

<sup>79</sup> *See* Edin, *supra* note 38 (arguing that women living in poverty have to make hard choices to support and protect their children, one of these choices being the choice not to marry and create an unstable living environment); *see also* Orr, *supra* note 78, at 226, 236-37 (writing that low-income mothers face social, political, and economic inequalities such as gender bias and lower incomes).

<sup>80</sup> *See* NPC, *supra* note 42, at 12. The Healthy Marriages Initiative allocated funds to promote marriage. *See generally* CTR. ON BUDGET AND POLICY PRIORITIES, REVISED SIDE-BY-SIDE COMPARISON OF FAMILY FORMATION PROVISIONS IN TANF REAUTHORIZATION LEGISLATION (2002), <http://clasp.org/publications/6-5-02tanf3.pdf> [hereinafter SIDE-BY-SIDE COMPARISON].

<sup>81</sup> *See* NPC, *supra* note 42, at 12.

communities.<sup>82</sup> The reauthorization of TANF is still pending in both houses of Congress, but proposals include a detailed marriage promotion program using advertising campaigns, high school classes on the importance of marriage, pre- and post-marital conflict management programs, and divorce reduction programs, among others, all using TANF funds to promote these goals.<sup>83</sup> Under the current law, "TANF funds may be used to support these activities but there is no dedicated funding stream."<sup>84</sup>

## V. STATE SPECIFIC ATTEMPTS AT MARRIAGE PROMOTION

In addition to this pending legislation, some states have implemented programs of their own that aim to promote marriage in accordance with the Healthy Marriage Initiative.<sup>85</sup> Perhaps the most extensive is in Oklahoma, where the state officials have created the Oklahoma Marriage Initiative.<sup>86</sup> This program includes creating a marriage resource center, community based workshops sponsored by

<sup>82</sup> The argument being marriage provides for stability, wealth, and an overall healthier environment for children. Roundtable Resources on the Healthy Marriage Initiative, The Roundtable on Religion and Social Welfare Policy (June 30, 2004), <http://www.religionandsocialpolicy.org/news/article.cfm?id=1668>.

<sup>83</sup> Personal Responsibility, Work, and Family Promotion Act of 2005, H.R. 240, 109th Cong. § 103 (2005). See generally SIDE-BY-SIDE COMPARISON, *supra* note 80 (proposing \$100 million grant program to promote healthy marriage through public advertising campaigns, high school education marriage programs, marriage education and skills development, pre-marital education programs, marriage enhancement skills training, divorce reduction programs, and marriage mentoring programs).

<sup>84</sup> SIDE-BY-SIDE COMPARISON, *supra* note 80, at 3.

<sup>85</sup> See DEBORAH A. ORTH & MALCOLM L. GOGGIN, HOW STATES AND COUNTIES HAVE RESPONDED TO THE FAMILY POLICY GOALS OF WELFARE REFORM 7-10 (2003), <http://www.rockinst.org/publications/federalism/ACFFinal1203.pdf> (summarizing how states such as Oklahoma, Michigan, and Arizona are using TANF money to fund marriage promotion programs); see also National Conference of State Legislatures, *Strengthening Marriage and Two-Parent Families* (2002), <http://www.ncsl.org/statefed/welfare/strength.htm#funds> [hereinafter NCSL] (comparing the different marriage promotion programs enacted by states); *Frontline: Let's Get Married*, (PBS television broadcast Nov. 14, 2002), <http://www.pbs.org/wgbh/pages/frontline/shows/marriage/etc/script.html> (explaining how Welfare requirement recipient attended "relationship training" along with required TANF work training).

<sup>86</sup> See generally The Oklahoma Marriage Initiative, <http://www.okmarriage.org> (last visited Oct. 9, 2006); see also ORTH & GOGGIN, *supra* note 85, at 42 n.12 ("Oklahoma is distinctive because of the extraordinary efforts the state has made to promote marriage and strengthen two-parent families."); NCSL, *supra* note 85 (outlining the main components of Oklahoma's Marriage Initiative).

PREP<sup>87</sup> hosted in community centers and schools throughout Oklahoma, and youth outreach programs, among other agendas.<sup>88</sup> The PREP workshops are offered to TANF recipients as well as non-TANF recipients<sup>89</sup> to learn marriage skills, discourage pre-marital births, and dissuade divorce.<sup>90</sup> Oklahoma has designated \$10 million in TANF funds for these programs, 1.8 million of which had already been spent as of 2002 on PREP classes and other preliminary work.<sup>91</sup> Furthermore, Oklahoma has amended its TANF statute to reflect the policy-preference for a couple to be married by calculating aid amounts differently for a couple who is cohabitating, as opposed to a couple who has chosen to marry.<sup>92</sup> Through this program, Oklahoma has affirmatively chosen to give preferential treatment to two-parent families in factually similar situations based solely on marital status.

In Arizona, officials have allocated over \$1 million to fund their Marriage Initiative program.<sup>93</sup> This program funds

<sup>87</sup> See generally PREP Inc. Divorce Prevention and Marriage Enhancement Program, <http://www.prepinc.com> (last visited Oct. 20, 2006). PREP is a series of educational workshops aimed at encouraging marriage and discouraging divorce.

<sup>88</sup> See generally The Oklahoma Marriage Initiative, *supra* note 86 (explaining Oklahoma Marriage Initiative); see also NCSL, *supra* note 85 (describing the Oklahoma Marriage Initiative program).

<sup>89</sup> See Oklahoma Marriage Initiative Marriage Education and Workshops, <http://www.okmarriage.org/Services/MarriageEducationWorkshops.asp> (last visited Oct. 20, 2006) (describing the PREP workshops are "free to anyone who wishes to attend"); see also ORTH & GOGGIN, *supra* note 85, at 11 (stating that twenty to twenty-five percent of the enrollees were TANF clients).

<sup>90</sup> See generally PREP Inc. Divorce Prevention and Marriage Enhancement Program, <http://www.prepinc.com> (last visited Oct. 20, 2006) (giving an overview of the PREP program); see also ORTH & GOGGIN, *supra* note 85, at 9 (discussing how PREP was based certain risk factors found to lead to divorce and those that strengthen marital relationships).

<sup>91</sup> See NCSL, *supra* note 85 (stating that Oklahoma has used \$10 million of TANF funds, with \$1.8 million already spent); see also ORTH & GOGGIN, *supra* note 85, at 16 (stating that in March of 2000 Governor Keating set aside \$10 million to fund Oklahoma Marriage Initiative).

<sup>92</sup> See OKLA. ADMIN. CODE § 340:10-3-57(f) (2006). The statute states (in reference to a cohabitating partner of the TANF recipient): "The income of this individual(s) is computed the same as stepparent income; however, the exemption of one-half of the remainder and dependent care expense is not applicable in determining this individual's countable earned income." This is an income-based incentive for married TANF recipients by allowing them to disregard the additional income. ORTH & GOGGIN, *supra* note 85, at 13.

<sup>93</sup> See NCSL, *supra* note 85 (stating that Arizona has spent \$1,150,000 in TANF funding for their Marriage Initiative); see also ORTH & GOGGIN, *supra* note 85, at 16 (stating that Arizona allocated over \$1 million of TANF funds for programs to form and maintain two-parent families and promote marriage).



marriage skills workshops in community centers and also the production of "healthy marriage" handbooks that are distributed to couples who apply for a marriage license.<sup>94</sup> Utah has allocated \$600,000 of TANF funds towards the Governor's Commission on Marriage.<sup>95</sup> This program hosts yearly conferences on marriage issues, has implemented high school civics classes focusing on marriage, and developed an informational video for couples anticipating marriage.<sup>96</sup>

In Michigan, officials have enacted the Encouraging Family Formation pilot program.<sup>97</sup> This program uses TANF funds to create a family formation and fathering curriculum to promote marriage and responsible parenting across the state.<sup>98</sup> West Virginia set aside \$12.8 million to pay for a pilot program that granted an extra \$100 credit per month to married couples receiving TANF funds while the couple remained married.<sup>99</sup>

What all these programs have in common is that they have been created as a response to the passage of TANF, and thus use TANF money for funding. Most of these programs are experimental and there is insufficient data to determine their

<sup>94</sup> See Katherine Shaw Spaht, Article, *Revolution and Counter-Revolution: The Future of Marriage in the Law*, 49 LOY. L. REV. 1, 65 (2003); NCSL, *supra* note 85. Arizona has spent \$75,000 for vouchers and \$75,000 for the printing and production of marriage handbooks. *Id.*

<sup>95</sup> NCSL, *supra* note 85 (stating that Utah has spent \$600,000 in TANF funding towards their Governor's Commission on Marriage).

<sup>96</sup> See ORTH & GOGGIN, *supra* note 85, at 7. Utah's program hosts marriage workshops and conferences, as well as distributing educational tapes on marriage-related issues to couples applying for marriage licenses. See generally Utah Marriage, <http://utahmarriage.org> (last visited Oct. 20, 2006).

<sup>97</sup> See NCSL, *supra* note 85 (stating that Michigan instituted the Encouraging Family Formation pilot program using TANF funds to create family units and improve parenting and communication skills); see also ORTH & GOGGIN, *supra* note 85, at 15 (characterizing Encouraging Family Formation as having similar purposes to PREP).

<sup>98</sup> See ORTH & GOGGIN, *supra* note 85 (describing the twin aims of Encouraging Family Formation program as elevating role of fathers in life of family when a child is born and preventing non-marital births when there is already a child out of wedlock); see also NCSL, *supra* note 85 (showing that Michigan set aside \$400,000 for these programs for the 2002 fiscal year and additional \$250,000 has been appropriated for 2003 in addition to the remaining unused portion of the 2002 grant).

<sup>99</sup> See NCSL, *supra* note 85; Cheryl Wetzstein, *Welfare Promotes Marriage; Education Courses up for Renewal Aim to Stabilize Families*, WASH. TIMES, Sept. 16, 2002, at A01. The \$12.8 million was intended to give 128,497 married couples an extra \$100 a month in their welfare checks, as a "reward" for staying together. *Id.* While this program has since been discontinued, the bonus was awarded to 4496 families from the period of January 1997 through June 2000. NCSL, *supra* note 85.

effectiveness;<sup>100</sup> however, initial findings suggest that there has been no noticeable rise in healthy marriage statistics.<sup>101</sup> Perhaps the most relevant study as to the effects of TANF on marriage is from the Fragile Families and Child Well Being Study.<sup>102</sup> The study was conducted in the late 1990s and followed 4700 couples during the birth of their children, most of whom were unmarried at the time of the study.<sup>103</sup> The study explores how low-income families are presented with different challenges than those of couples from middle class backgrounds.<sup>104</sup> More than two-fifths of the couples from low-income communities had children from other relationships, making these couples immersed in complex family structures that lead to additional stress and depletion of resources.<sup>105</sup> Additionally, this study indicates that women are less likely to marry a man when there are children present from his other relationships.<sup>106</sup> The Fragile Families Study suggests

<sup>100</sup> DAVID FEIN ET AL., WELFARE REFORM AND FAMILY FORMATION PROJECT, ASSESSING THE EFFECTS 2 (2002), <http://www.abtassociates.com/attachments/wrffproject.pdf> [hereinafter ASSESSING] (discussing the lack of evidence of whether or not TANF programs have actually influenced family formation); see NPC, *supra* note 42, at 22 (outlining the challenges to evaluating marriage initiative programs due to the fact that marriage education programs have not systematically targeted the low-income population, and any program evaluations have not used large samples).

<sup>101</sup> See ASSESSING, *supra* note 100, at 5 (stating that of the minimal evidence as to how welfare reforms actually affect attitudes towards marriage, little if no impact has been found, the reforms most likely to affect marriage being the ones that directly influence welfare benefits); see also NPC, *supra* note 42, at 23 (suggesting the possibility of small increase in number of couples who marry as a result of participating in marriage initiative programs).

<sup>102</sup> The Fragile Families and Child Well-Being Study, <http://www.fragilefamilies.princeton.edu/about.asp> (last visited Oct. 20, 2006).

<sup>103</sup> See NPC, *supra* note 42, at 17.

<sup>104</sup> See Kathleen Mullan Harris et al., *New Frontiers in Poverty Research and Policy: A Summit on Poverty University of North Carolina Center on Poverty, Work and Opportunity: Family Structure, Poverty and Family Well-Being*, 10 EMPL. RTS. & EMPLOY. POLY J. 45, 59-60 (discussing how "fragile families" data suggests that serious behavioral problems such as infidelity, criminal behavior, and domestic violence prevent many of these unmarried couples from ever getting married); see also NPC, *supra* note 42, at 17 (stating that circumstances for low-income parents may pose special challenges to promoting marriage due to the existence of complex family relationships between several households).

<sup>105</sup> See NPC, *supra* note 42, at 17 (specifying the challenges low-income parents face due to relationships among individuals in several different households). See generally MARCIA J. CARLSON, CTR. FOR RESEARCH ON CHILD WELLBEING WORKING PAPER #2006-28-FF, THE CONSEQUENCES OF MULTI-PARTNERED FERTILITY FOR PARENTAL INVOLVEMENT AND RELATIONSHIPS (2006) <http://crrw.princeton.edu/workingpapers/WP06-28-FF.pdf> (discussing large number of "multi-partnered fertility" couples today which has increased family complexity by creating challenges on how to manage parental roles).

<sup>106</sup> See NPC, *supra* note 42, at 17 (explaining the presence of children from other

that marriage promotion in low-income families may not be the most efficient use of resources because of complex familial factors that influence decision-making.<sup>107</sup>

Additionally, programs such as PREP are not specifically designed to promote marriage per se.<sup>108</sup> PREP is a program that was designed in a university setting for middle class couples to engage in pre-marital and post-marital counseling to help prepare for marriage and maintain a healthy relationship after the marriage commitment has been made.<sup>109</sup> In fact, the developers of PREP have stated that "PREP is effective at weeding out couples before marriage but has never been shown to encourage marriage. . . . Marriage education can empower those who choose marriage for themselves to improve their odds."<sup>110</sup> Programs such as PREP have a valid place in our social framework, but these types of programs do not pretend to be a method to encourage marriage among the poor.<sup>111</sup>

relationships reduces the likelihood of marriage); *see also* CARLSON, *supra* note 105, at 8 (stating that couples are less likely to cohabit or marry after having a child if the father, not the mother, already has children by a previous partner).

<sup>107</sup> *See* Pamela Smock & Stephanie Coontz, *Marriage Preparation Prescriptions for Welfare Reform and Poverty Reduction: Take with a Couple of Grains of Salt*, available at <http://listserv.uh.edu>

[/cgi-bin/wa?A2=ind0212&L=ccf&T=0&P=2375](http://cgi-bin/wa?A2=ind0212&L=ccf&T=0&P=2375) (last visited Oct. 21, 2006) (stating there is no evidence that programs such as PREP are effective for low-income families and that those on welfare have many other issues to deal with besides marital conflict); *see also* NPC, *supra* note 42, at 18 (commenting "that low-income couples face different or more complex issues that need to be addressed within marriage promotion programs.").

<sup>108</sup> *See* Smock & Coontz, *supra* note 107 ("[T]here is confusion between the goal of preparing people for marriage and promoting marriage among low-income people. The Heritage Report takes several programs and interventions designed to improve relationship quality, and ultimately to deter divorce, among already married couples as evidence that such programs could get low-income couples to marry. In fact, however, the main program discussed in the report [PREP] that does target unmarried couples does not aim to encourage marriage."); *see also* NPC, *supra* note 42, at 15 (listing purposes and effect of PREP).

<sup>109</sup> *See* Helen Alvaré, *Saying Yes Before Saying "I Do": Premarital Sex and Cohabitation as a Piece of the Divorce Puzzle*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 7, 39 (2004) (observing that PREP helps engaged, just married, and long married couples with their relationships); *see also* NPC, *supra* note 42, at 18 (noting PREP was designed for engaged or married middle-class couples).

<sup>110</sup> Smock & Coontz, *supra* note 107.

<sup>111</sup> *See* Smock & Coontz, *supra* note 107 (mentioning that PREP does not promote marriage); *see also* NPC, *supra* note 42, at 18 (clarifying that PREP was developed for middle class couples that were already engaged or married).

David Fein discusses some early studies of state programs implemented to achieve the goals set forth in TANF.<sup>112</sup> Fein asks questions such as, what effects do marriage promotion goals have on welfare recipients and how do these goals affect the psyche of a welfare recipient?<sup>113</sup> There is no answer to these questions just yet, but simple surveys of women receiving welfare suggest that the choice not to marry is largely because of external factors, rather than a predisposition to deviant behavior.<sup>114</sup> Fein's research suggests that while marriage promotion programs may make marriage seem like a more attractive option for single women, it does nothing to address the reasons why these women choose not to marry.<sup>115</sup> Coincidentally, these are some of the same reasons why single women find themselves in the dire situations poverty creates; lack of jobs, resources, and adequate housing.<sup>116</sup>

Marriage initiatives, like the ones in Oklahoma or West Virginia, affirmatively discriminate against one couple because of the choice not to marry.<sup>117</sup> Marriage is a constitutionally protected choice, with some caveats.<sup>118</sup> The

<sup>112</sup> ASSESSING, *supra* note 100, at 5 (discussing Delaware's ABC program which imposed financial incentives and penalties to range of work and parenting requirements, Florida's Family Transitions Program and Connecticut's Jobs First Program, both of which offered only incentives, Fein takes look at preliminary research of effectiveness of these programs in marriage rates among welfare families, considering their thoughts concerning marriage before initiative passed).

<sup>113</sup> *Id.* at 2 (examining how state TANF programs, which promote two-parent families, change attitudes associated with marriage).

<sup>114</sup> See Edin, *supra* note 38 (stating women are not willing to marry financially unstable partners because of risk such choice would place on their children); see also Editorial, *supra* note 46, at A14 (suggesting that in while poor woman desire marriage, they lack access to mature and responsible mates, which is the true cause for their eventual decision not to marry).

<sup>115</sup> See ASSESSING, *supra* note 100, at 5 (suggesting that poverty has little to do with desire to be married, but everything to do with reality of that choice).

<sup>116</sup> See ASSESSING, *supra* note 100, at 5 (pointing to education statistics as a measure of marriage behavior); see also Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U. L. REV. 1179, 1186 (2001) (discussing that women's poverty was due to low-paying jobs, single parenthood, and inadequate government benefits).

<sup>117</sup> See NCSL, *supra* note 85 (highlighting money that West Virginia gives to two-parent families for every month they remain married and services that Oklahoma gives to married couples); see, e.g., OKLA. ADMIN. CODE § 340:10-3-57(f)(3) (stating in reference to cohabitating partner of TANF recipient that "[t]he income of this individual(s) is computed the same as stepparent income; however, the exemption of one-half of the remainder and dependent care expense is not applicable in determining this individual's countable earned income").

<sup>118</sup> See, e.g., *Turner v. Safley*, 482 U.S. 78, 95 (1987) (stating "decision to marry is a

choice to marry is one that is fundamental to the individual, and state intervention into this area must not unduly infringe upon this right.<sup>119</sup> In cases surrounding a person's right to privacy within marriage, the Court has applied a strict scrutiny test to determine the validity of governmental intrusion.<sup>120</sup> Marriage promotion programs intrude upon the personal decision-making processes of TANF families because they use penalties and incentives to manipulate a family's basic means of subsistence to encourage behavior that the state believes is most advantageous for society.<sup>121</sup> These programs claim to offer a better alternative, but in reality are attempts to coerce couples into marriage, a decision that may not be financially feasible or emotionally beneficial to the family.<sup>122</sup>

## VI. CONSTITUTIONAL PROTECTIONS FOR TANF RECIPIENTS

### A. Entitlements

Historically, financial assistance to needy families was considered an entitlement. Entitlement status was a revolutionary concept introduced by Charles Reich in 1964, and adopted by the Supreme Court in *Goldberg v. Kelly*.<sup>123</sup> In

fundamental right"). *But see* *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (declaring marriage fundamental right protected by Constitution but not yet declaring this right universal to include same-sex marriage).

<sup>119</sup> See *Turner*, 482 U.S. 78 at 95 (announcing that right to marry is fundamental right); *Meyer*, 262 U.S. at 399 (stating that liberty in Constitution includes individual's right to marry).

<sup>120</sup> See *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978) (commenting that marriage regulations that significantly interfere with marital relationship are subject to rigorous scrutiny); *Griswold v. Connecticut*, 381 U.S. 479, 503-04 (1965) (stating "the Connecticut anti-use statute invades a protected area of privacy and association or that it demeans the marriage relationship. The nature of the right invaded is pertinent, to be sure, for statutes regulating sensitive areas of liberty do, under the cases of this Court, require strict scrutiny") (White, J., concurring).

<sup>121</sup> See 42 U.S.C. § 601(a)(2)-(4) (2006) (listing the state-encouraged behaviors of marriage, prevention of out-of-wedlock pregnancies and two-parent families); see also NCSL, *supra* note 85 (listing the benefits that married couples receive from state marriage promotion programs).

<sup>122</sup> See *Edin*, *supra* note 38 (highlighting such reasons to not get married as affordability, respectability, trust, and control); see also *ENDABUSE*, *supra* note 27 (noting that marriage "does not guarantee greater economic security").

<sup>123</sup> See *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (stating welfare benefits are matter of entitlement); see also Charles A. Reich, *Individual Rights and Social Welfare*:

this landmark case, the Court cites Reich's language and refers to welfare benefits as a "matter of statutory entitlement for persons qualified to receive them."<sup>124</sup> This was a perceptible shift in poverty law jurisprudence. The acknowledgment by the Court that welfare was a right that could not be suspended without due process of the law originated in this case.<sup>125</sup> This decision affirmed a welfare recipient's right to be heard. It affirmed the right to challenge arbitrary reduction or cancellation of benefits that a citizen is entitled to.<sup>126</sup> This innovative approach to welfare policy set the stage for the evolution of social and political attitudes concerning poverty for the next thirty years. However, in 1996, with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act, Congress explicitly eliminated the entitlement status of welfare.<sup>127</sup> Although entitlement was never a constitutional concept, it suggested a stronger relationship of accountability between the government and the recipient, a relationship which some argue has now become distorted.<sup>128</sup>

*The Emerging Legal Issues*, 74 YALE L. J. 1245, 1255 (1965) (discussing the irony that while society recognizes the "entitlement" many in society have to monetary sources of security, "it is only the poor whose entitlements . . . that have not been effectively enforced").

<sup>124</sup> *Goldberg*, 397 U.S. at 262.

<sup>125</sup> *Id.* at 264. The Court asserts:

"[W]hen welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process. For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. Thus the crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy." (internal citations omitted).

*Id.*

<sup>126</sup> *Id.* at 265 (arguing that the governmental interests that require welfare, also require its "uninterrupted provision").

<sup>127</sup> 42 USC § 601(b) (2006). "No individual entitlement. This part . . . shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part . . . ."

<sup>128</sup> See Janice Peterson, *Feminist Perspectives on TANF Reauthorization: An Introduction to Key Issues for the Future of Welfare Reform*, Institute for Women's Policy Research Briefing Paper (Feb. 2002), available at <http://www.iwpr.org/pdf/e511.html#key1> ("In many ways, the most radical change associated with the 1996 legislation is the elimination of the individual entitlement to cash public assistance. Under the [Aid to Families with Dependent Children] program, states were required to aid all families eligible under state income standards; this is no longer the case. It is now left up to the

Traditionally, welfare recipients have been granted some scope of constitutional protection. A few cases of note are *N.J. Welfare Rights Org. v. Cahill*,<sup>129</sup> *King v. Smith*,<sup>130</sup> *Moore v. City of East Cleveland*,<sup>131</sup> and *Carey v. Population Servs. Int'l.*<sup>132</sup> Each of these cases served an important constitutional role in creating a barrier of protection that welfare recipients are entitled to despite their subservient role to the government.

### *B. Equal Protection Clause*

The Equal Protection Clause of the Constitution has been interpreted to grant rights to all citizens that may not be abridged by any law made by state or federal governments.<sup>133</sup> In *Cahill*, the Court discussed the rights of illegitimate children and the validity of laws passed to penalize the parents and the children of these parents who were born out-of-wedlock.<sup>134</sup> Specifically, the New Jersey Welfare Rights Organization challenged the constitutionality of programs that limited or denied benefits to children based on the marital status of their parents.<sup>135</sup> The Court agreed that such a program was not constitutionally valid because the crux of

states to determine when and under what conditions they will provide cash public assistance to poor families. While the federal law prohibits states from using TANF funds to assist certain categories of individuals or families, there is no requirement that a state provide assistance to any individual or family.”); *see also* Cossman, *supra* note 11, at 454 (arguing that “[t]he paternity provisions [of the Personal Responsibility and Work Opportunity Reconciliation Act] do not expressly promote marriage. Rather, they are intended to make women ‘appropriately’ dependent on the biological fathers of their children, whether married or not, rather than the state.”).

<sup>129</sup> 411 U.S. 619 (1973).

<sup>130</sup> 392 U.S. 309 (1968).

<sup>131</sup> 431 U.S. 494 (1977).

<sup>132</sup> 431 U.S. 678 (1977).

<sup>133</sup> U.S. CONST. amend. XIV, § 1. “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” *See Reynolds v. Sims*, 377 U.S. 533, 565 (1964) for an example of a case describing the rights under the Equal Protection Clause as “inalienable.”

<sup>134</sup> *Cahill*, 411 U.S. at 620 (arguing that because children are not responsible for their own birth, imposing punishments on that illegitimate child is “ineffectual” and “unjust” way of deterring parents).

<sup>135</sup> *Id.* at 619 (challenging part of assistance program that only gave benefits to families of households composed of heterosexual married couples with a natural child of both, natural child of one adopted by the other, or adopted child by both).

the analysis was based upon the marital status of the parents, not the need of the children.<sup>136</sup>

Similarly, in *King v. Smith*, the Court struck down a state regulation which denied assistance to children if their mother was cohabitating with any “able-bodied” man.<sup>137</sup> These supposed “substitute father” regulations were meant to discover if a woman was defrauding the system by accepting welfare assistance while living with a man who was supporting her.<sup>138</sup> Under the Alabama regulation, a man qualified as a “substitute father” if he lived in the home with the child’s mother, if he visited the home frequently for the purpose of “cohabitating” with the child’s mother, or if he did not frequent the home but “cohabited” with the mother elsewhere.<sup>139</sup> These regulations made no determination about the income or responsibilities of the “substitute father.”<sup>140</sup> The Court found no legitimate state interest in this policy,<sup>141</sup> and further stated that this policy ignored the reality of the situation, that the “substitute father” had no legal obligation to the children, therefore his existence could not be leveraged as punishment against children eligible for aid.<sup>142</sup>

In *Moore v. City of East Cleveland*<sup>143</sup>, the Court invalidated a city ordinance that attempted to define what constitutes a family for the purpose of limiting occupancy of dwelling to

<sup>136</sup> *Id.* at 621 (holding that there is no constitutionally sufficient justification for denying an essential right to a child simply because the child is illegitimate).

<sup>137</sup> *King v. Smith*, 392 U.S. 309, 333 (1968) (holding Alabama’s substitute father regulation invalid because it defines “parent” in a manner inconsistent with Section 406 of the Social Security Act).

<sup>138</sup> *Id.* at 311 (explaining how Alabama’s “substitute-father” regulation denied assistance to children of a mother who “cohabits” with any single or married “able-bodied” man).

<sup>139</sup> *Id.* at 313-14 (citing to Alabama Manual for Administration of Public Assistance, pt. I, c. 11, s. VI).

<sup>140</sup> *Id.* at 315-16. (explaining how in this case the alleged “substitute father” had nine children of his own, lived with his wife, was not the father of any of the mother-in-question’s children and thus was not legally obligated under Alabama law to support any of them).

<sup>141</sup> *Id.* at 320 (holding that Alabama’s interests in discouraging immorality and illegitimacy are not legitimate justifications for AFDC disqualification).

<sup>142</sup> *Id.* at 327 (explaining that children of fathers living in the home are in a much different situation than children of mothers who cohabit with a man the state considered “substitute fathers” in that these “substitute fathers” have no legal duty to support the unrelated children).

<sup>143</sup> 431 U.S. 494 (1977).



members of a narrowly defined family.<sup>144</sup> This ordinance limited the definition of family to include only certain familial relationships including husband, wife, and children.<sup>145</sup> Under this ordinance, the plaintiff had committed a crime by allowing her two grandsons, who were first cousins, to reside in her home.<sup>146</sup> The Court invalidated the ordinance as an intrusive regulation of the family<sup>147</sup>, stating that "[t]his Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by [the Constitution]."<sup>148</sup>

The importance of these cases is that state governments do not have the authority to dictate the moral or personal decisions of their citizens when it comes to marriage and family matters.<sup>149</sup> This protection of fundamental privacy rights includes welfare recipients.<sup>150</sup> States are not granted power to interfere with personal decision-making solely based upon a person's status as a welfare recipient.<sup>151</sup> States do, however, have the authority to construct independent welfare

<sup>144</sup> *Id.* at 495-500 (holding Cleveland's housing ordinance invalid because of its failure to alleviate those conditions the City set out to resolve).

<sup>145</sup> *Id.* at 496 n.2 (citing to Housing Code of City of E. Cleveland § 1341.08 (1966)).

<sup>146</sup> *Id.* at 496-97. Mrs. Moore was living in her home with her son, Dale, and two grandsons, Dale Jr. and John Moore. It is unclear whether her son was living in the home at the time of the citation, but it is implied that if he was, she would have received a second citation. The ordinance recognizes as a "family" only a few categories of related individuals, none of which fit the household in question. Upon conviction, Mrs. Moore was sentenced to five days in jail and a twenty-five dollar fine. *Id.*

<sup>147</sup> *Id.* at 498-99 (holding that ordinance "selects certain categories of relatives who may live together and declares that others may not," which is an invalid government intrusion on choices concerning family living arrangements).

<sup>148</sup> *Id.* at 499.

<sup>149</sup> *See id.* (stating that freedom of personal choice in family matters and marriage are protected from intrusive regulation by the state); *N.J. Welfare Rights Org. v. Cahill*, 411 U.S. 619, 619, 621 (1973) (reversing decision that upheld program which limited benefits to "only those otherwise qualified families 'which consist of a household composed of two adults of the opposite sex ceremonially married to each other who have at least one minor child . . . of both, the natural child of one and adopted by the other, or a child adopted by both,'" saying it discriminated against illegitimate children).

<sup>150</sup> *See C.K. v. Shalala*, 883 F. Supp. 991, 1014 (D.N.J. 1995) (stating that it is "well-settled that decisions about family composition, conception and childbirth fall into a constitutionally protected zone of privacy"); *see also Taylor v. Ledbetter*, 818 F.2d 791, 794 (11th Cir. 1987) (stating substantive due process rights are fundamental rights, such as privacy and marriage, which a state cannot take away).

<sup>151</sup> *See Shalala*, 883 F. Supp. at 1014 (noting that a state may not hinder one's exercise of protected choices, such as family composition); *Valley Family Planning v. N.D.*, 489 F. Supp. 238, 242 (D.N.D. 1980) (discussing that recipient of governmental benefits may not be required to surrender constitutional right in order to obtain a benefit).

programs, but these programs must exist within certain federal and constitutional guidelines available to all citizens through the Equal Protection Clause.<sup>152</sup> Marriage promotion programs are subject to these same requirements.<sup>153</sup> States must take care to not infringe on the personal decision-making of individuals, welfare recipient or not.<sup>154</sup> Statutes that grant incentives or enforce penalties because of the choice to marry or not marry must be strictly construed to promote a legitimate governmental interest.<sup>155</sup> A citizen's right to marry is a fundamental right protected by the Fourteenth Amendment, and state interference must be careful not to infringe upon this right.<sup>156</sup> Marriage promotion programs are yet to be challenged from this angle, but this may be more a reflection of a lack of resources by the affected class, diminutive state participation in the initiative, or other external factors, rather than an acceptance of the legitimacy of the initiative.<sup>157</sup>

<sup>152</sup> See *Dandridge v. Williams*, 397 U.S. 471, 486-87 (1970) (noting that states have the power to constitute their social policy but, in areas of social welfare, the state must have legitimate state interest for their regulation); *Rodriguez v. United States*, 983 F. Supp. 1445, 1458 (S.D. Fla. 1997) (discussing necessary connection between state regulation and legitimate governmental purpose).

<sup>153</sup> See *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (noting higher standard of review for state laws which interfere with personal rights protected by Constitution); see also *Lipscomb v. Simmons*, 962 F.2d 1374, 1378 (9th Cir. 1992) (discussing heightened standard of scrutiny for regulations which burden exercise of fundamental rights independently protected against governmental interference).

<sup>154</sup> See *Moore*, 431 U.S. at 499 (finding that freedom of personal choice in marriage and family matters are protected from intrusive regulation by the state); *Cahill*, 411 U.S. at 621 (reversing decision that upheld program which limited benefits to children of married parents while discriminating against children of parents who were not married); *King v. Smith*, 392 U.S. 309, 333 (1968) (striking down state regulation which denied assistance to children whose mother was cohabitating with any "able-bodied" man).

<sup>155</sup> See *Cleburne*, 473 U.S. at 440 (discussing that laws which impinge on constitutionally protected personal rights are subject to strict scrutiny); *Zablocki v. Redhail*, 434 U.S. 374, 381 (1978) (noting that strict scrutiny is required in analyzing under Equal Protection Clause when classification created by statute infringes "upon a fundamental right," such as right to marry).

<sup>156</sup> See *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) ("This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.") (citing *Roe v. Wade*, 410 U.S. 113, 152 (1973)); see also *Valley Family Planning*, 489 F. Supp. at 242 (stating indirect "inhibition or deterrence of the exercise of a constitutional right is as odious as the direct prohibition of the exercise of that right.").

<sup>157</sup> See *Moore v. E. Cleveland*, 431 U.S. 494, 499 (1977) (noting that courts continually reject states' intrusive regulation of the family); see also *Hearing on Welfare Reform Reauthorization Proposals: Hearing Before the Subcomm. on Human Resources Before the H. Comm. on Ways and Means*, 109th Cong. (2005) (statement of Lisalyn R.

### C. Right to Privacy

Right to privacy actions have a detailed history in constitutional law jurisprudence. Perhaps the most relevant case for this inquiry is *Griswold v. Connecticut*.<sup>158</sup> While *Griswold* does not directly address the issue of marriage, it does discuss the rights of married couples to engage in private decision-making processes free from government intrusion.<sup>159</sup> The Court discusses the idea of a "zone of privacy" that emanates from numerous amendments in the Constitution.<sup>160</sup> Justice Douglas states "[w]e deal with a right of privacy older than the Bill of Rights. . . . Marriage is . . . intimate to the degree of being sacred. [This union promotes] a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects."<sup>161</sup>

The Court has also found a right to privacy in the Fourteenth Amendment Due Process Clause.<sup>162</sup> The Court has stated in *Roe v. Wade*<sup>163</sup> that although "[t]he Constitution does not explicitly mention any right of privacy . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution."<sup>164</sup> The right to privacy includes the

Jacobs, Vice President for Government Relations, Legal Momentum (formerly NOW Legal Defense and Education Fund)), available at <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2996#>Jacobs (discussing overwhelming poverty among children and mothers in single parent households; that states are allowed, but not required, to use funds for marriage promotion programs; and that nearly eight in ten Americans want the government to stay out of personal decisions about when and whether to marry).

<sup>158</sup> 381 U.S. 479 (1965).

<sup>159</sup> *Id.* at 486 (noting that marriage is sacred and contained in a right to privacy older than the Bill of Rights).

<sup>160</sup> *Id.* at 483-85 (discussing First, Third, Fourth, Fifth and Ninth Amendments respectively, defining how each amendment creates a zone of privacy, which connect to create a constitutionally protected right to privacy).

<sup>161</sup> *Id.* at 486.

<sup>162</sup> See *Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (discussing personal rights of privacy which are fundamental in the concept of liberty, guaranteed by the Fourteenth Amendment); see also *Griswold*, 381 U.S. at 486 n.1, 487 (noting that Supreme Court has never held that "Bill of Rights or the Fourteenth Amendment protects only those rights that the Constitution specifically mentions by name," and that "Due Process Clause protects liberties which are 'so rooted in the traditions and conscience of our people as to be ranked as fundamental'" marriage being one of those fundamental rights (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934))).

<sup>163</sup> 410 U.S. 113.

<sup>164</sup> *Id.* at 152.

right of marriage.<sup>165</sup> The Court recognizes marriage as part of a fundamental right to privacy protected by the Constitution and thus deserving of the highest level of Constitutional safeguard from governmental intrusion.<sup>166</sup>

In a subsequent case, the Court extended the rights of personal decision-making (concerning contraception) to unmarried couples. In *Eisenstadt v Baird*<sup>167</sup>, the Court stated “[i]f the right to privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”<sup>168</sup> Although this case does not directly deal with the right to marry, the right to privacy and decision-making within that right is presumably a protected area.<sup>169</sup> There is a justifiable argument that government regulation, be it incentives or penalties, within the realm of the right to privacy, must be strictly construed to promote a legitimate purpose.<sup>170</sup> The government has a legitimate interest in regulating some aspects of contraception, but the Court has determined that this right is not absolute.<sup>171</sup> The

<sup>165</sup> *Id.* (listing marriage and family relationships as examples of rights included in the guarantee of personal privacy); see *Moore v. E. Cleveland*, 431 U.S. 494, 499 (1977) (discussing matters and family life as one of the “liberties protected by the Due Process Clause of the Fourteenth Amendment”); *Griswold*, 381 U.S. at 486 (noting that marriage is right of privacy older than the Bill of Rights).

<sup>166</sup> *Griswold*, 381 U.S. at 487 (discussing Fourteenth Amendment protection of rights that are so rooted in tradition as to be ranked fundamental, and should be safeguarded from impairment by the States); see *Taylor v. Ledbetter*, 818 F.2d 791, 794 (11th Cir. 1987) (noting marriage as substantive due process right, incorporated through the Fourteenth Amendment, which is held to be so fundamental that a state may not take it away).

<sup>167</sup> 405 U.S. 438 (1972).

<sup>168</sup> *Id.* at 453.

<sup>169</sup> See *Carey v. Population Servs. Int’l*, 431 U.S. 678, 684-85 (1978) (“While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions ‘relating to marriage’”) (quoting *Roe v. Wade*, 410 U.S. 113, 152-53 (1973)); see generally *Eisenstadt*, 405 U.S. 438 (evaluating right to privacy in contraception context and holding that one’s decision to use contraception is protected by right to privacy regardless of whether she is married or not).

<sup>170</sup> See *Troxel v. Granville*, 530 U.S. 57, 80 (2000) (Thomas, J., concurring) (arguing that strict scrutiny should be applied to all infringements on fundamental rights); *Griswold*, 381 U.S. at 503-04 (White, J., concurring) (arguing that any regulation of fundamental right must be reviewed under strict scrutiny standard and suggesting that privacy might be such a right).

<sup>171</sup> See generally *Carey*, 431 U.S. 678 (holding that statute prohibiting various types of contraceptive sales was unconstitutional intrusion by state on individual decisions

regulation of contraception must be limited to the distribution and manufacture of the drug, not to the personal decision making that is connected to the use of the product.<sup>172</sup> This paper asserts that the same or a similar argument could be made for the right to privacy regarding marriage. The government has the right to regulate the mechanics of marriage, for example, by issuing licenses<sup>173</sup>, but there is an infringement on the right to privacy when officials attempt to coerce individuals to marry, particularly in the case of economically disadvantaged TANF recipients.<sup>174</sup> TANF recipients rely on the support they receive from the government for the basic needs of survival.<sup>175</sup> Marriage promotion programs attempt to coerce TANF recipients to make "better" decisions in their personal relationships by threatening financial consequences, the area where welfare recipients are most vulnerable.<sup>176</sup> This type of program is

protected as privacy rights under due process clause of Fourteenth amendment); *Eisenstadt*, 405 U.S. 438 (concluding right of privacy to be free from unwanted intrusions into fundamental decisions of whether to have children is same for married and unmarried alike); *Griswold*, 381 U.S. at 485-86 (holding state law prohibiting dispensing or use of birth control devices to or by married couples violated right of privacy found implicit in various amendments in bill of rights).

<sup>172</sup> See *Carey*, 431 U.S. at 685-86 ("[T]he constitutionally protected right of privacy extends to an individual's liberty to make choices regarding contraception [and] does not . . . automatically invalidate every state regulation in this area. The business of manufacturing and selling contraceptives may be regulated in ways that do not infringe protected individual choices.").

<sup>173</sup> See *Pennoyer v. Neff*, 95 U.S. 714, 734-35 (1877) (positing that the state has an "absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved."); see also Kevin A. Smith, Note, *For Better or For Worse: State Prohibition on Same-Sex Marriages*, 43 WAYNE L. REV. 287 (1996) ("The power to regulate marriage has been held to be a sovereign function of the states.").

<sup>174</sup> See NCSL, *supra* note 85 (describing marriage promotion programs in various states); see, e.g., OKLA. ADMIN. CODE § 340:10-3-57 (2006) (setting up various special considerations for distribution of TANF funds, some of which give disparate consideration to unmarried couples and sometimes penalize them economically by withholding welfare funds).

<sup>175</sup> See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (noting the grave importance of welfare assistance and commenting that the "controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits [and] [s]ince he lacks independent resources, his situation becomes immediately desperate"); *Catholic Charities USA Urges Greater Flexibility in Restrictive Proposed Federal Welfare Regulations*, U.S. NEWSWIRE, Aug. 22, 2006 [hereinafter *Catholic Charities*] (suggesting that welfare recipients depend on TANF funds for basic needs).

<sup>176</sup> See ORTH & GOGGIN, *supra* note 85 at 13 (illustrating how various states have responded to federal welfare policy goal of promoting marriage through "financial rewards and penalties"); see also PAULA ROBERTS, CTR. FOR LAW AND SOCIAL POLICY, UPDATE ON THE MARRIAGE AND FATHERHOOD PROVISIONS OF THE 2006 FEDERAL BUDGET AND THE

contrary to the American sense of freedom and justice because it attempts to interfere with personal decision making processes that all Americans are constitutionally entitled to.<sup>177</sup> At the core of the American concept of freedom is the right to make decisions concerning personal matters without the interference of the government. This right is the crux of the constitutional right to privacy.<sup>178</sup>

Any regulation of a fundamental right passed by the legislature is subject to strict scrutiny by the courts.<sup>179</sup> To withstand this scrutiny, the government must prove not only that there is a compelling interest in the regulation, but also that there is no less restrictive means to attain this interest.<sup>180</sup> Marriage is a legitimate interest of the state, promoting social stability and harmony, but programs that coerce or penalize TANF recipients for the choice not to marry, are not only discriminatory, but also, do not meet the least restrictive means test for promoting this interest.<sup>181</sup>

2007 BUDGET PROPOSAL 2 (2006), [http://www.clasp.org/publications/marriage\\_fatherhood\\_budget2006.pdf](http://www.clasp.org/publications/marriage_fatherhood_budget2006.pdf) (describing healthy marriage promotion activities qualified to receive federal TANF funding).

<sup>177</sup> See *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) ("If right of privacy means anything, it is the right of the individual, whether married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear a child."); *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965) (invalidating state law that criminalized use of contraceptives in violation of Fourteenth Amendment Due Process Clause's fundamental right of privacy within marriage).

<sup>178</sup> See *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684-85 (1977) (listing the Court-recognized personal decisions an individual may make without unjustified government interference as those relating to marriage, procreation, contraception, family relationships, and child rearing and education); *Eisenstadt*, 405 U.S. at 454 n.10 (stating "fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.") (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

<sup>179</sup> See *Troxel v. Granville*, 530 U.S. 57, 80 (2000) (Thomas, J., concurring) (arguing that strict scrutiny should be applied to all infringements on fundamental rights); *Griswold*, 381 U.S. at 504 (Thomas, J., concurring) (arguing that any regulation of a fundamental right must be reviewed under strict scrutiny standard and suggesting that privacy might be such a right).

<sup>180</sup> See *Griswold*, 381 U.S. at 504 (Thomas, J., concurring) (describing strict scrutiny standard and what it entails); *United States v. Playboy*, 529 U.S. 803, 813 (2000) (explaining strict scrutiny standard, which requires that a restriction to be narrowly tailored to promote a compelling government interest and that there be no less restrictive alternative if it is to survive).

<sup>181</sup> See George W. Dent, Jr., *The Defense of Traditional Marriage*, 15 J.L. & POL. 581, 582 (1999) (identifying public interest in marriage as child rearing, socializing adults, and promoting individual happiness); Rector, *supra* note 30, at 105 (announcing benefits of marriage that are "beyond reasonable dispute" and suggesting that government policy can

Non-marriage penalties that are seen in the Oklahoma and West Virginia legislation are punitive in nature and are not strictly construed programs to promote an interest in marriage.<sup>182</sup> These programs infringe upon an individuals right to personal autonomy by pressuring single women to sacrifice their independence.<sup>183</sup>

## VII. CRITICISMS OF MARRIAGE PROMOTION PROGRAMS

While constitutional challenges are useful to understand the legal methods of challenging the infringement of rights marriage coercion represents, as a policy matter, marriage promotion programs are simply not the most efficient use of TANF funds.<sup>184</sup> Marriage counseling programs could be beneficial to families that are struggling, but they are not a sufficient method to alleviate the problems of the poverty stricken in this country. Marriage promotion programs under TANF divert funds from traditional programs that provide positive results, such as education, childcare, and job training.<sup>185</sup> The recent reauthorization of TANF has affirmed

and should promote marriage). *But see* Smock & Coontz, *supra* note 107 ("We completely agree that interventions to help couples manage their relationships with each other and with their children in a healthy way would be an important addition to the social safety net in the United States today. . . . We are concerned, however, that there is a rush to implement untested, quick fix programs that underestimate the severity of the populations they hope to serve, and that are being used to justify a diversion of funds from proven anti-poverty measures such as education, child care assistance, and job training.").

<sup>182</sup> See NCSL, *supra* note 85 (describing marriage promotion programs in various states); *see, e.g.*, OKLA. ADMIN. CODE § 340:10-3-57 (2006) (setting up various special considerations for distribution of TANF funds, some of which give disparate consideration to unmarried couples and sometimes penalize them economically by withholding welfare funds).

<sup>183</sup> See Edin, *supra* note 38 (commenting on how many single mothers say they enjoy being in control of their lives and do not want to be owned or to slave for their husbands); *see also* Praveen Dalal, Empower Women (March 8, 2005), <http://www.countercurrents.org/gender-dalal080305.htm> (discussing how women very often make huge sacrifices in order to fully devote themselves to their families upon marriage).

<sup>184</sup> See NOW, *supra* note 27, at 1-2 (suggesting that marriage promotion programs divert welfare funds from more beneficial basic economic supports at a time of growing poverty); *see also* Catholic Charities, *supra* note 175 (extrapolating from research done over the past decade that "the most effective path to self-sufficiency for welfare recipients is through a combination of work and education.").

<sup>185</sup> See Smock & Coontz, *supra* note 107 ("The problems associated with poverty and family instability can be solved only by a multi-pronged approach that includes: investments in job training and education; interventions to help couples, married or unmarried, parent more effectively; and accessible, affordable birth control in low-income

the four goals of the 1996 TANF bill and allocated even more TANF funding to experimental marriage promotion programs.<sup>186</sup> The reauthorization champions these programs and makes marriage promotion programs mandatory in every state.<sup>187</sup> But this affirmation of untested programs is what makes experts in the field nervous. A report published by the *Journal of Marital and Family Therapy* stated, “the field of [marital and family therapy] research is not ready for definitive conclusions at this stage of its development . . . most of the findings have not been replicated systematically . . . many methodological problems still plague the research and hinder the accumulation of a coherent and clear body of knowledge.”<sup>188</sup>

David Fein of the Welfare Reform and Family Formation Project comes to similar conclusions. Fein states, “[t]ruly understanding the effect of welfare reforms on family formation requires research strategies that take all these various complexities into account . . . the best evaluations to date have devoted only superficial attention to these matters.”<sup>189</sup> Fein discusses some preliminary findings, and suggests that a women’s disposition toward marriage is formed before she is classified as a welfare recipient.<sup>190</sup> Fein

communities to ensure that pregnancies are not unwanted or mistimed.”); see also *Catholic Charities*, *supra* note 175 (commenting on positive results of work and education on welfare recipients’ self-sufficiency).

<sup>186</sup> See NOW, *supra* note 27, at 1 (noting that over \$1.4 billion would be diverted to untested marriage promotion programs over first few years of program); ROBERT E. RECTOR & MELISSA G. PARDUE, BACKGROUNDER, UNDERSTANDING THE PRESIDENT’S HEALTHY MARRIAGE INITIATIVE 5-6 (March 26, 2004) [http://www.heritage.org/Research/Family/upload/60463\\_1.pdf](http://www.heritage.org/Research/Family/upload/60463_1.pdf) (describing funding and suggested programs under President’s Healthy Marriage Initiative).

<sup>187</sup> See NOW, *supra* note 27, at 1 (commenting that house bill would “require every state to have a marriage promotion program”); *contra* RECTOR & PARDUE, *supra* note 186, at 5-6 (stating that “[a]ll participation in the President’s marriage program would be voluntary” and describing competitive funding plan).

<sup>188</sup> William M. Pinsof & Lyman C. Wynne, *The Efficacy of Marital and Family Therapy: An Empirical Overview, Conclusions, and Recommendations*, J. OF MARITAL AND FAM. THERAPY, 21: 585-614 (Oct. 1995), available at [http://findarticles.com/p/articles/mi\\_qa3658/is\\_199510/ai\\_n8720965](http://findarticles.com/p/articles/mi_qa3658/is_199510/ai_n8720965).

<sup>189</sup> ASSESSING, *supra* note 100, at 4.

<sup>190</sup> See DAVID FEIN, WELFARE REFORM AND FAMILY FORMATION PROJECT, WHAT DO THEY THINK? WELFARE RECIPIENTS’ ATTITUDES TOWARD MARRIAGE AND CHILDBEARING 2 (2002), <http://www.abtassociates.com/attachments/wrff-rb2.pdf> (stating the difference in marriage expectations between AFDC and non-AFDC recipients was only eleven percent, seventy-one percent of AFDC women and eighty-two percent of non-AFDC women expect to marry).



reports that "welfare recipients see marriage as highly desirable in the abstract, but do not assess their own marriage prospects very favorably."<sup>191</sup> These findings suggest that marriage policies should focus more on making marriage financially feasible, through job training and education programs, rather than on counseling and community programs.<sup>192</sup> While marriage counseling programs may be helpful in maintaining marriage rates and discouraging divorce, they do nothing to provide the financial stability that promotes a healthy family life and stable upbringing for children.<sup>193</sup>

A tangential criticism of marriage promotion programs is the concern that marriage initiatives ignore the dark reality of domestic abuse among TANF recipients.<sup>194</sup> Statistics indicate that between fifty to sixty percent of women receiving welfare have been abused by a partner at some point in their lives.<sup>195</sup> Welfare programs should be reflective and cognizant of the statistics relating to domestic violence in low-income homes and recognize the evils that exist in many women's lives in order to provide support, rather than encouraging potentially dangerous and volatile situations.

<sup>191</sup> ASSESSING, *supra* note 100, at 5.

<sup>192</sup> See FEIN, *supra* note 190, at 7 (stating that welfare policies should be designed to make marriage more economically feasible). See generally Smock & Coontz, *supra* note 107 (discussing the connection between economic and marital distress and how proven programs that enhance one's economics are the best way to tackle the concerns with marriage among the poor).

<sup>193</sup> See FEIN, *supra* note 190, at 2 (arguing that single parents can raise children as well as married couples can, suggesting there isn't a direct link to a child's well-being and whether the parents of that child are married); Smock & Coontz, *supra* note 107 (arguing that diverting funds from proven anti-poverty measures such as education, child care assistance, and job training into marriage promotion programs among low-income families may not have the effect that the government is intending by doing so).

<sup>194</sup> See ENDABUSE, *supra* note 27, at 1 (pointing out that marriage promotion programs may lead to domestic violence in TANF recipients); SHARMILA LAWRENCE, NAT'L CTR. FOR CHILDREN IN POVERTY, DOMESTIC VIOLENCE AND WELFARE POLICY: RESEARCH FINDINGS THAT CAN INFORM POLICIES ON MARRIAGE AND CHILD WELL-BEING 2 (2002), <http://www.researchforum.org/media/DomVio.pdf> (discussing research findings pointing to the high rates of domestic abuse among TANF recipients).

<sup>195</sup> See Richard Tolman & Jody Raphael, *A Review of the Research on Welfare and Domestic Violence*, 56 J. SOC. ISSUES 655, 660 (2000) (stating that most rates of lifetime domestic violence among women on welfare were in the fifty to sixty percent range); ENDABUSE, *supra* note 27, at 1 (stating that studies consistently show that at least fifty to sixty percent of women receiving welfare have experienced physical abuse by an intimate partner).

Studies suggest that marital conflict rather than divorce is a more important indicator of childhood adjustment.<sup>196</sup> A study from Cornell University found that “the most important factors [for child development] were the mother’s level of education, income level, and the quality of the home environment, not marital status.<sup>197</sup> These findings would suggest that welfare reform legislation should focus primarily on education and job training for women receiving welfare rather than simply encouraging marriage, which may invite domestic conflict.<sup>198</sup> Furthermore, forty percent of families living in poverty are two-parent families.<sup>199</sup> This statistic indicates that marriage and two parent families do not guarantee economic stability and success. Policy needs to reflect the reality of the situation; economic security improves the likelihood that a marriage will be successful, but marriage does not ensure economic security.<sup>200</sup>

### VIII. MARRIAGE PROMOTION ALTERNATIVES

One of the common reasons TANF recipients cited divorce was because of economic hardship or financial instability.<sup>201</sup> TANF marriage promotion programs simply ignore the real hardships welfare recipients face. While marriage, in and of itself may be a desirable goal for many members of the community, it is not a solution to poverty, and it is especially

<sup>196</sup> See ENDABUSE, *supra* note 27, at 6 (arguing that children in high-conflict marriages are more likely to experience behavioral and academic problems); LAWRENCE, *supra* note 195 (stating that much research demonstrates the serious negative effects on children when exposed to domestic violence).

<sup>197</sup> ENDABUSE, *supra* note 27, at 6.

<sup>198</sup> *Id.* at 7.

<sup>199</sup> U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2002, CURRENT POPULATION REPORTS 6 (2003), <http://www.census.gov/prod/2003pubs/p60-222.pdf> (providing statistical data on percentage of families below the poverty line).

<sup>200</sup> See ASSESSING, *supra* note 100, at 6 (stating that research has led to the hypothesis that increased income led to decreased relationship stress and conflict). *But see* ENDABUSE, *supra* note 27, at 2 (stating that because of death and divorce, getting married does not ensure economic security); Edin, *supra* note 38 (pointing out that nearly six out of ten new marriages end in divorce).

<sup>201</sup> See Edin, *supra* note 38 (stating that welfare-reliant mothers have a consistent need for supplemental income, and thus couples often break up over money); *see also* Smock & Coontz, *supra* note 107 (discussing the connection between economic and marital distress and that marriages are more likely to break up when a family’s economic situation is poor).

not a legitimate justification for diverting much needed cash assistance from the poorest of our communities.<sup>202</sup> Marriage is often times, very simply, not a viable option for women living in poverty, so no matter how many counseling and education programs TANF endorses, and funds, marriage promotion programs can not produce the results policymakers' desire.<sup>203</sup> Marriage initiatives do not address the four issues cited by Edin in her research as to why poor women do not marry; namely, affordability, respectability, trust and control.<sup>204</sup> These issues reflect the everyday struggles of a mother living in poverty, and to these women, marriage is just another hassle that will add to the instability of her family.<sup>205</sup> TANF should focus on solving these problems, not encourage marriage to a population that is fighting for survival. TANF should provide adequate education, job training, and child care programs that will help alleviate the pressure of a single mother. Marriage is a social goal that many women hope to achieve one day, but marriage is not a surefire path to success. A welfare mother's struggle is unique to the struggles and aspirations of the middle class. While she may aspire to marriage one day,<sup>206</sup> at this point in her life it is simply not the right choice. She needs to first consider the welfare of her children, and make herself financially and emotionally stable so that she become independent on her own, before she considers jeopardizing

<sup>202</sup> See Smock & Coontz, *supra* note 107 ("We are especially concerned when unsupported claims are made about the effectiveness of programs that have never been tested on the proposed target population. Such exaggerated claims have consequences. Several states have already begun to license marriage education counselors, who frequently receive training sessions of only two days, and to channel anti-poverty funds into marriage training courses given by such newly-credentialed individuals."); see also ENDABUSE, *supra* note 27, at 7 (stating that focusing on marriage promotion will not lift women out of poverty and Congress should strengthen existing provisions that support women).

<sup>203</sup> See ENDABUSE, *supra* note 27, at 7 (stating that marriage promotional progress can be potentially dangerous, and instead programs should support education and job training); see also Edin, *supra* note 38 (discussing various theories of non-marriage).

<sup>204</sup> See Edin, *supra* note 38. Edin interviewed unmarried poor women and categorized these four factors as the main reasons for staying single. *Id.*

<sup>205</sup> See Edin, *supra* note 38 (interviewing women who expressed various reasons for staying unmarried); see also ENDABUSE, *supra* note 27, at 5 (stating that marriage may not improve poverty and may contribute to domestic violence instead).

<sup>206</sup> See, e.g., FEIN, *supra* note 191, at 2 (showing that seventy-one percent of AFDR recipients expect to marry).

the welfare of her children by bringing another adult into their home.

Welfare legislation should focus on practical programs that produce tangible results. Programs that focus on education, childcare assistance, and job training help a person succeed on an individual level which leads to emotional independence and financial stability.<sup>207</sup> These are the types of programs that help lift people out of poverty, and not just simply disappear from the welfare rolls.<sup>208</sup> Marriage promotion programs distort the effectiveness of welfare policies by focusing on individual's personal choices, rather than the economic policies that created the situation they are in. Poverty is not caused by deviant behavior, but rather a set of circumstances that are caused by our political, economic, and social structures.<sup>209</sup>

People living in poverty should not be subject to judgment from those who are more privileged simply because of their misfortune. Marriage promotion policies are government-sanctioned judgment of lifestyle choices. This narrow-mindedness has no place in welfare policy. Public programs should be free of moral judgment and focus on helping families overcome poverty. Marriage promotion programs are chock full of moral judgment and gender bias that simply does not belong within the public assistance scheme.

<sup>207</sup> See Smock & Coontz, *supra* note 107; see also ENDABUSE, *supra* note 27, at 2. Insuring services such as job training opportunities, childcare, and education should be lawmakers' priority.

<sup>208</sup> See ENDABUSE, *supra* note 27, at 7 ("Investments in education, training and work supports can both empower women to achieve economic security . . . and strengthen marriages.").

<sup>209</sup> See Doran & Roberts, *supra* note 75, at 399-400 (writing that welfare programs "carry clear assumptions about the morality and motivations of welfare recipients" which reinforce the notion that welfare recipients are the cause of social problems); see also Williams, *supra* note 47, at 741 (arguing that the New Right's economic strategy created a redistribution of money to the rich and increased poverty, and to legitimate the policy blame was diverted to welfare-receivers who have not seized the opportunity to work and thus deviated from national ideology).

